



March 25, 2002

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2002-1476

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160253.

The Comptroller of Public Accounts (the "comptroller") received a request for "all documentation in response to RFP No: 304-1-0936MAR, Affiliated Computer Systems." You state that you will release that portion of the responsive information that this office found to be public in Open Records Letter No. 2001-4835 (2001). You assert that other responsive information, not at issue in the previous ruling, is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. You also assert that Affiliated Computer Systems, Incorporated ("ACS") may have a proprietary interest in some of the responsive information. Although you take no position regarding the proprietary nature of this information, you have notified ACS of the request for information and its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

---

<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990).

We conclude that much of the information that you seek to withhold under section 552.107 contains confidential communications from the client to the attorney as well as the attorney's legal advice or opinions. These documents therefore come within the attorney-client privilege and are excepted from disclosure under section 552.107(1). We have marked the information that you may withhold.

You also claim that some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.-Austin 1992, no writ) and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, or opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993); *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.-Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. After reviewing the information at issue, we have determined that a portion thereof reflects the comptroller's policymaking processes. This information, which we have marked, may be withheld under section 552.111.

Finally, we address your assertion that the release of some of the submitted information may implicate the proprietary interests of ACS. An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received from ACS any arguments for withholding the requested information. We thus have no basis for concluding that this information must be withheld from disclosure under section 552.110 of the Government Code. *See Gov't Code* § 552.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial

competitive harm); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Therefore, the comptroller may not withhold any of the submitted information under section 552.110.

In summary, under sections 552.107 and 552.111, the comptroller may withhold the information that we have marked. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

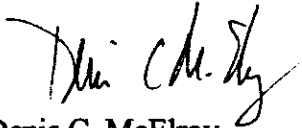
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 160253

Enc. Marked documents

c: Ms. Michelle Moseley  
EpicEdge, Inc.  
5508 Highway 290 West, Suite 300  
Austin, Texas 78735-8804  
(w/o enclosures)

Mr. John M. Adkins  
Senior Vice President  
ACS Enterprise Solutions, Inc.  
2828 North Haskell Avenue  
Dallas, Texas 75204  
(w/o enclosures)